

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2446/M/2023  
Assessment Year: 2014-15**

M/s. The Maheshwar Niketan Co-operative Housing Society Limited, 5-B, Maheshwar Niketan, Dr. Deshmukh Marg, Peddar Road, Mumbai – 400 026 <b>PAN: AAAAT3438N</b>	Vs.	Income Tax Officer-19(3)(1), Matru Mandir, Tardeo Road, Mumbai - 400007
(Appellant)		(Respondent)

**Present for:**

Assessee by : None  
Revenue by : Shri Ajeya Kumar Ojha, D.R.

Date of Hearing : 16 . 10 . 2023  
Date of Pronouncement : 07 . 11 . 2023

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

At the very outset it is brought to the notice of the bench by the registry by way of defect memo that the present appeal was due to be filed on 14.05.2023 but filed on 10.07.2023 with a delay of 57 days and Assessee sought to condone the delay on the grounds inter-alia that the account matters of the assessee are being looked after by Shri Upendra Wade, CA, whose email ID is registered with the income tax portal; that subsequently the assessee trust engaged another CA namely Mr. Madhusudan Sarf to look after the income

tax matters who failed to update the registered email ID on the income tax portal; that all the notices were sent by the Commissioner of Income Tax (Appeals) Ld. CIT(A) [hereinafter referred to as the CIT(A)] on the email address of Mr. Upendra Wade about which the assessee trust was not aware; that subsequently it came to the notice that the order by Ld. CIT(A) has been passed and appeal was filed that delay in filing the appeal neither intentional nor malafide.

2. However, on the other hand, the Ld. D.R. for the Revenue opposed the application for condonation of delay on the ground that the late filing of appeals in this case is apparently malafide due to callous attitude of the assessee and prayed for dismissal of the application.

3. Keeping in view the fact that the assessee has changed its CA from Mr. Upendra Wade to Mr. Madhusudan who failed to update its email ID with the income tax portal and as such notices issued by the Ld. CIT(A) during the appeal have not been served, which is a sufficient cause to condone the delay being an inadvertent mistake. So the delay of 57 days in filing the present appeal is hereby condoned and the appeal is ordered to be registered and being heard today on merits.

4. The appellant assessee by filing the present appeal, sought to set aside the impugned order dated 15.03.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2014-15 on the grounds inter-alia that :-

*“The following grounds of appeal are independent of, and without prejudice to, one another:*

*1. The National Faceless Appeal Centre, Delhi (hereinafter referred to as the CIT(A)) erred in framing an ex parte order*

*The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have passed an ex parte order.*

*2. The CIT(A) erred in upholding the action of the Assistant Commissioner of Income-tax- 19(3), Mumbai (hereinafter referred to as the Assessing Officer) in treating the income of Rs 12,25,000, being rent income on hoardings under the head "Income from Other Sources" instead of "Income under the House Property" per return of income.*

*The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the impugned action of the Assessing Officer inasmuch as the CIT(A) has not correctly appreciated the facts of the case in its entirety.*

*3. The CIT(A) erred in upholding the action of the Assessing Officer in making a disallowance under section 24(a) and addition under section 69C of a sum of Rs 69,746, being the amount of insurance premium paid.*

*The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have upheld the impugned action of the Assessing Officer inasmuch as he has not appreciated the facts of the case in its entirety.*

*The appellants crave leave to add to, alter or amend the aforesaid grounds of appeal.”*

5. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee is a co-operative society and has shown rental income of Rs.61,56,782/- under the head “income from house property” and claimed deduction of Rs.18,23,010/- under section 24(a) of the Act. The assessee also claimed deduction of an amount of Rs.69,746/- and Rs.10,337/- being the premium paid to insurance and land revenue tax respectively and shown the total income from the house property at Rs.42,53,689/-. Declining the contentions raised by the assessee the Assessing Officer (AO) proceeded to make the addition of

Rs.12,25,000/- and Rs.69,746/- on account of rental income on hoarding and unexplained expenditure under section 69C of the Income Tax Act, 1961 (for short 'the Act') respectively and thereby framed the assessment under section 143(3) of the Act.

6. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has dismissed the appeal for want of prosecution. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

7. Notice of the appeal was sent to the assessee society through e-mail as well as Registered Post with Acknowledgment Due (RPAD), which was duly served as per acknowledgment placed on the record by the registry but none appeared on behalf of the assessee. Keeping in view the fact that the Ld. CIT(A) has dismissed the appeal for want of prosecution and no purpose would be served by keeping the appeal pending to procure the presence of the assessee as the result would be same even after appearance of the assessee in the present appeal, so the Bench has decided to dispose of the present appeal on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

8. We have heard the Ld. D.R. for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

9. Bare perusal of the impugned order passed by the Ld. CIT(A) goes to show that as recorded in para 3.3 two notices for

26.02.2021 and 17.02.2023 were issued but the assessee failed to appear before the Ld. CIT(A) who has proceeded to dismiss the appeal for want of prosecution without entering into the merits. In the given circumstances, we are of the considered view that when the assessee has brought on record the fact that due to lapse on the part of his newly engaged CA who could not update his email ID on the income tax portal the notice was not received, the assessee is required to be given another opportunity to pursue its appeal before the Ld. CIT(A) to comply with the rule of natural justice.

10. In view of what has been discussed above, the impugned order passed by the Ld. CIT(A) for want of prosecution who was otherwise supposed to dispose of the appeal on merits even if the assessee is presumed to have not appeared intentionally, the impugned order is not sustainable in the eyes of law, hence ordered to be set aside. Hence, the impugned order is set aside to be decided afresh by the Ld. CIT(A) by providing opportunity of being heard to the assessee.

11. Resultantly, the appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open court on 07.11.2023.**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 07.11.2023.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.